

Legal Assistance Resource Center

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H.B. 6143 -- Protections for tenants in foreclosure actions

Housing Committee public hearing -- February 19, 2009

Testimony of Raphael L. Podolsky

Recommended Committee action: APPROVAL OF THE BILL with
technical amendments

H.B. 6143 builds on the protections for tenants enacted last fall in November 24 Special Session P.A. 08-2 (S.B. 1200), which (a) regulated "cash for keys" offers, particularly in relation to tenant security deposits, and (b) assured that tenants cannot be evicted after a foreclosure action against the landlord until at least 30 days after the foreclosure is completed.

P.A. 08-2 did not address the growing problems caused by the insistence of many lenders on emptying buildings after foreclosure. Their theory apparently is that buildings with tenants in them cannot be sold. This practice has had serious adverse consequences for tenants, buildings, and neighborhoods. Unfortunately, in center cities, vacant buildings are often targets of vandalism, crime, or both. The lender's failure to keep a building occupied, especially in a housing market in which even the most desirable houses may sit unsold for months on end, may jeopardize the physical condition of its collateral. There are numerous cases in which vacant buildings have been stripped of copper and other valuable materials, resulting in a precipitous decline in their value far below any areawide decline in market values. Moreover, as buildings are vandalized or boarded, their conditions impact other properties in the immediate area, spreading decline like a cancer. Meanwhile the tenants, who previously had a place to live, have been displaced.

It has taken time, but national lenders like Fannie Mae and Freddie Mac have come to see the counterproductive nature of the policy of routine eviction of tenants after foreclosure and are now offering leases to holdover tenants. This bill builds on the concept that, if good tenants are encouraged to stay rather than leave, the lender, the occupant, and the city itself will all benefit. In particular, the bill provides for:

(1) No termination of leases by foreclosure (Sec. 1): For residential leases, it overturns the common law doctrine that foreclosure terminates leases. A tenant with a lease that has not yet expired is entitled, at the very least, to stay until the lease is over. This is the same policy that would ordinarily be applied if the lender had obtained the property by purchase rather than foreclosure. Massachusetts adopted this policy for subsidized leases in 2007.

(2) Determination of tenant rights through the housing courts (Secs. 2-3): Under existing practice, most lenders that want to force the tenants to vacate first obtain title

(see reverse side for continuation and technical amendments.....)

through foreclosure and then bring a separate eviction action in the housing court to remove the tenants. Connecticut law, however, allows lenders to name the tenants as defendants and obtain an "ejectment" through the foreclosure action, and about 10% of them do so. The foreclosure court, however, is an inconvenient and unfair venue for determining the rights of tenants and gives the tenants no access to mediation, which is routinely available in the housing courts. This section, in effect, codifies the usual practice.

(3) Continued occupancy after foreclosure (Sec. 4): The bill applies the Fannie Mae policy to all foreclosures by requiring continued leasing to the tenant, except for good cause (such as non-payment of rent or breach of the lease), unless the property is being sold to a bona fide buyer who has required that the building be vacant as a condition of the sale.

(4) Emergency repairs during foreclosure: The bill makes the foreclosing lender responsible for emergency repairs during the foreclosure action if the owner fails to make them. Under existing law, only the owner is responsible but many owners abandon the building before or during foreclosure, making it impossible to get emergency repairs made and driving the tenants out of the building.

Technical amendments:

(1) **In Section 2**, change lines 2-4 to read: "A judgment of foreclosure of a mortgage on [residential] real property containing one or more dwelling units shall not terminate a rental agreement for a dwelling unit that was entered into between the mortgagor or the mortgagor's agent and a tenant...."

Reason: To make clear that Section 1 applies only to leases of residential units and that the lease need not have been with the mortgagor personally.

(2) **Reword Section 4(b)** (lines 56-62) as follows: "The provisions of this section shall not be construed to reduce or supersede the rights of a tenant under section 47a-20e of the general statutes, as amended by this act [or]. Nothing in the provisions of this section or of section 47a-20e shall be construed to reduce or supersede the rights of any tenant under section 47a-23c of the general statutes to remain in occupancy without regard to foreclosure or under any other law that protects the right of a tenant to remain in occupancy without regard to foreclosure."

Reason: To make clear that neither this section nor section 47a-20e supercedes the existing rights of elderly and disabled tenants to remain without limit in rental arrangements subject to the just cause eviction provisions of section 47a-23c.

(3) **Delete Section 2 and modify the beginning of Section 3** (lines 40-42) to read: "Whenever a mortgage or lien of residential real property has been foreclosed and there is a bona fide tenant, as defined in section 47a-20e, in possession...."

Reason: For drafting efficiency. Section 2 is in the bill solely to apply the definition of "bona fide tenant" to Section 3. It would appear to be more convenient to put the cross-reference into Section 3, thereby making Section 2 unnecessary.